

IN THE IOWA DISTRICT COURT FOR PLYMOUTH COUNTY

**PLYMOUTH COUNTY BOARD OF
REVIEW,**

Petitioner-Appellants,

v.

**STATE OF IOWA PROPERTY
ASSESSMENT APPEAL BOARD**

Respondent-Appellee.

CASE NO. CVCV031439

**RULING ON PETITION FOR JUDICIAL
REVIEW**

This matter comes before the Court upon a hearing on October 13, 2008 upon a Petition for Judicial Review filed by Petitioner-Appellants Plymouth County Board of Review (hereinafter "PCBR"). At the hearing, the PCBR was represented by attorney Brett Ryan. Respondent-Appellee, the State of Iowa Property Assessment Appeal Board (hereinafter "PAAB"), was represented by attorney Jessica Braunshweig-Norris. Upon reviewing the written arguments, considering the oral arguments, reviewing the factual and procedural records, and the applicable law, the Court now issues the following ruling:

FINDINGS OF FACT

Catherine Hamman (hereinafter "Hamman"), a Plymouth County property owner, challenged the assessment of her property undertaken on January 1, 2007. This assessment listed the value of Hamman's property at \$105,360, which included \$80,200 for the dwelling. Hamman took the matter before the PCBR, and the matter was to be decided upon a hearing. Hamman submitted evidence in the form of four other

properties which she thought were comparable to her own and suggested the value of her dwelling was \$36,170, a significant difference. The PCBR ultimately determined the value of the property should be reduced to \$97,340. Hamman appealed the matter to the PAAB, a state agency, for consideration on September 6, 2007. The PAAB has authority over such proceedings under **Iowa Code section 441.37A** which allows a taxpayer to file an appeal with the PAAB when it disagrees with a local assessment upon one of the following "errors":

- a. That said assessment is not equitable as compared with assessments of other like property in the taxing district. When this ground is relied upon as the basis of a protest the legal description and assessments of a representative number of comparable properties, as described by the aggrieved taxpayer shall be listed on the protest, otherwise said protest shall not be considered on this ground.
- b. That the property is assessed for more than the value authorized by law, stating the specific amount which the protesting party believes the property to be over assessed, and the amount which the party considers to be its actual value and the amount the party considers a fair assessment.
- c. That the property is not assessable, is exempt from taxes, or is misclassified and stating the reasons for the protest.
- d. That there is an error in the assessment and state the specific alleged error.
- e. That there is fraud in the assessment which shall be specifically stated.

ICA 441.37.1(a-e)(2007). The PAAB heard evidence including evidence concerning the four properties relied on by Hamman and evidence from Assessor Robert Heyderhoff on behalf of the PCBR who presented documentary evidence stating that the assessment was correct and that Hamman's exhibits could not be relied upon. The PAAB issued its decision on September 6, 2007. The decision was two pages long and contained a

paragraph summing up the facts and the evidence presented by the parties. It also included a scope of review which simply stated the review by the PAAB was de novo and that the Board would determine anew all questions that arose before the PCBR and that there was no presumption of correctness for the earlier assessment. The next section of the decision was entitled "Valuation" and stated:

The Board of Review reduced the valuation of the property from \$105,360 to \$97,340. The comparables submitted by the petitioner have a range of value for buildings from \$23,330 to \$47,030. The data submitted by the respondent have a range of building value from \$28,420 to \$111,420.

The last section was entitled "Conclusion" and stated:

Based upon the record and the evidence submitted, we modify the Hamman property assessed value to \$83,100 which includes land, dwelling, and improvements, for the January 1, 2007 assessment.

The PCBR asks for judicial review of the PAAB's reduction of the assessed property value.

SCOPE OF REVIEW

Under **Iowa Code Section 17A.19(1)**, a person aggrieved or adversely affected by a final agency action is entitled to judicial review. **Iowa Code Section 17A.19(10)** provides that the district court exercises its power of judicial review when it acts in an appellate capacity to review an agency action and correct errors of law. **Heartland Express, Inc. v. Terry**, 631 N.W.2d 260, 265 (Iowa 2001) (citing **IBP, Inc. v. Al-Gharib**, 604 N.W.2d 621, 627 (Iowa 2000)). The district court does not exercise de novo review. **St. Luke's Hosp. v. Gray**, 604 N.W.2d 646, 649 (Iowa 2000). The scope of judicial review is limited to the determination of whether the agency committed any errors of law specified in **Iowa Code section 17A.19(10)(a)–(n)**. **IBP, Inc. v. Harpole**, 621 N.W.2d 410, 414 (Iowa 2001).

The court must consider all of the evidence in the record, including evidence that supports and opposes the agency decision. **Ringland Johnson, Inc. v. Hunecke**, 585 N.W.2d 269, 272 (Iowa 1998). An agency's factual findings must be supported by substantial evidence when the record is viewed as a whole. **Iowa Code § 17A.19(10)(f); Al-Gharib**, 604 N.W.2d at 632. The substantiality of the evidence does not need to amount to a preponderance, but a mere scintilla will not suffice. **Elliot v. Iowa Dept. of Transp.**, 377 N.W.2d 250, 256 (Iowa Ct. App. 1985). When the agency's factual findings are supported by substantial evidence, they are binding on reviewing courts. **Al-Gharib**, 604 N.W.2d at 632.

An agency's findings of fact carry the effect of a jury verdict. **Terwilliger v. Snap-On Tools Corp.**, 529 N.W.2d 267, 271 (Iowa 1995). Therefore, reviewing courts must give deference to the agency's fact-finding role and broadly and liberally construe the agency's findings of fact to uphold its decision. **Al-Gharib**, 604 N.W.2d at 632 (citing **Ward v. Iowa Dept. of Transp.**, 304 N.W.2d 236, 237 (Iowa 1981)). Further, the court is not free to interfere with the agency's findings of fact where there is conflict in the evidence or disagreement as to the inferences from the evidence, whether disputed or not. **Harpole**, 621 N.W.2d at 420 ("Even if, 'as fact finder, we might have found otherwise,' we must affirm if there is enough evidence to support the findings."); **West Side Transport v. Cordell**, 601 N.W.2d 691, 693 (Iowa 1999) (citing **Stephenson v. Furnas Electric Co.**, 522 N.W.2d 828, 831 (Iowa 1994)).

The agency, as the fact finder, may accept or reject evidence in whole or in part. **Al-Gharib**, 604 N.W.2d at 631. The agency also has the duty to weigh the evidence and determine the witnesses' credibility. **Harpole**, 621 N.W.2d at 420. The agency must

consider both expert and lay evidence if it is relevant to the issues. **Blanchard v. Belle Plaine/Vinton**, 596 N.W.2d 904, 909 (Iowa Ct. App. 1999). Furthermore, if evidence is uncontroverted, the agency must state why it rejects that evidence. **Al-Gharib**, 604 N.W.2d at 631. However, the agency is not required to validate its decisions with precise detail and specificity. **Robbennolt v. Snap-On Tools Corp.**, 555 N.W.2d 229, 234 (Iowa 1996).

An agency must also state the evidence it relied on and detail the reasons for its conclusions. **Al-Gharib**, 604 N.W.2d at 633–634; **Bridgestone/Firestone v. Accordino**, 561 N.W.2d 60, 62 (Iowa 1997). The agency's decision must be sufficiently detailed to show the path it took through conflicting evidence. *Id.* However, as long as the agency's analytical process can be followed on appeal, the agency does not need to discuss every evidentiary fact and the basis for its acceptance or rejection. *Id.* The agency's duty to furnish a reasoned opinion is satisfied if it is possible to work backward and deduce what must have been the agency's legal conclusions and its findings of fact. *Id.*

CONCLUSIONS OF LAW

The PCBR states first that the PAAB did not sufficiently state its conclusions of law or findings of fact in its September 6, 2007 decision. Despite this argument, the PCBR argues that the PAAB could not have come to the conclusion it did based on either theories of inequity or over assessment and seeks to have the order reversed by this Court upon judicial review. Essentially, the PCBR states that it does not matter what theory the PAAB relied upon it making its decision as any decision would have been contrary to law. The PAAB argues its decision was accurate and supported by law, but that if there is need for correction, a remand and not reversal is appropriate.

The Court agrees with the PCBR that the decision on September 6, 2007 was inadequate as required by Iowa law. **Iowa Code section 17A.16(1)** governs decisions of administrative agencies, stating:

1. A proposed or final decision or order in a contested case shall be in writing or stated in the record. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. *The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact.* If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. *Each conclusion of law shall be supported by cited authority or by a reasoned opinion...*

I.C.A. § 17A.16(1)(emphasis added). The Iowa Supreme Court has mentioned the purposes of this legislative requirement, stating:

The practical reasons for requiring administrative findings are so powerful that the requirement has been imposed with remarkable uniformity by virtually all federal and state courts, irrespective of a statutory requirement. The reasons have to do with facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administrative consideration, helping parties plan their cases for rehearings and judicial review, and keeping agencies within their jurisdiction.

Brown v. Public Employment Relations Bd., 345 N.W.2d 88, 93 (Iowa 1984)(quoting 2 K. Davis, *Administrative Law Treatise* § 16.05 (1958)). In this case, there are many problems with the decision ultimately rendered by the PAAB. Not only are the Conclusions of Law and Findings of Fact too brief to be of much use, it is entirely correct that the PAAB fails to even indicate which theory it relies upon for making its decision to reverse the PCBR. There is nothing in the record to indicate any

part of the decision making process except for a brief discussion of valuation, which fails to indicate how the Board interpreted or used this information in order to make its final decision. Therefore, if the Court were to work backwards, it is impossible to see how the result was determined. There is no attempt to discuss or reconcile the evidence presented by the PCBR in favor of its position, just a mention that it exists. There is no method by which the Court can interpret the sparse decision so as to supply information about why it chose the valuation it did, a value which is notably different from the value claimed by either party. Upon finding the decision was inadequate, the question before the Court is whether this failure by the Board requires a reversal or a remand for a more thorough opinion which comports with the Iowa Code's requirements.

The PCBR argues that reversal should be granted, and the assessment should be reverted back to what it was prior to Hamman's appeal. Their argument depends on constructing what it believes were the only possible rationales for the PAAB's ultimate conclusion and disputing that said rationales were sufficient to warrant revision of the assessed value of the property. The PCBR states that Hamman appealed on the basis of inequity and over assessment, and the PAAB's decision must have addressed one of these two grounds. The PCBR states that the only evidence presented was documentary in nature and Hamman submitted only property cards for the four comparable properties and her "average valuation" based on the assessed dwelling value of the four properties. According to the PCBR, this evidence was insufficient to prove either inequity or over assessment.

The PCBR states inequity is not a substitute for challenging over assessment and that proof of inequity requires the proof of six separate elements:

(1) that there are several other properties within a reasonable area similar and comparable to his; (2) the amount of the assessments on those properties; (3) the actual value of the comparable properties; (4) the actual value of his property; (5) the assessment complained of; and (6) that by a comparison his property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.

Power v. Regis, 220 N.W.2d 587, 590 (Iowa 1974)(quoting Maxwell v. Shivers, 133 N.W.2d 709, 711 (1965)). The PCBR states that Hamman did not state the actual value of the comparable properties or present evidence that the properties were comparable to hers. Regarding the actual value claim, the PCBR states Hamman only presented the assessment value which is an incorrect approach under an Iowa Supreme Court ruling. **Riso v. Pottawattamie County Board of Review, 362 N.W.2d, 513, 518 (Iowa 1985).** The PCBR further states that Hamman similarly failed to prove the actual value of her own subject property. Further, the PCBR argues that the relief granted by the PAAB in this particular case does not comply with current law regarding relief under inequity theories under **Metropolitan Jacobsen Development Venture v. Board of Review, 524 N.W.2d 189 (Iowa 1994).**

The PCBR has comparable complaints regarding any relief based on an over assessment. In particular, it challenges Hamman's reliance on dwelling value only as opposed to value of the entire property. The PCBR states that in order to challenge based on over assessment that it is necessary to challenge the valuation of the property as a whole. **White v. Board of Review of Polk County, 244 N.W.2d 765 (Iowa 1976).** The PCBR also states Hamman's evidence is inadequate to determine the necessary values.

The PAAB responds by stating its decision was correct. However, the Court determines that the theories relied on by the PAAB in support of its decision do not exist in the decision it ultimately rendered on the subject. All its authority and arguments were created in response to this litigation and were not created in order to meet compliance with **Iowa Code section 17A.16(1)**. The PAAB further argues that if the Court finds the findings of fact and conclusions of law lacking under **17A.16(1)**, which it has, that remand is the appropriate remedy. The PAAB cites **Des Moines Independent Community School Dist. v. Department of Job Service, 376 N.W.2d 605, 610-611 (Iowa 1985)**, for the rule that if an "agency ruling does not disclose a sound factual and legal basis for its decision, the court should remand for findings of facts."

In **Abel v. Dept. of Personnel, 445 N.W.2d 385, 387 (Iowa App. 1989)**, the Iowa Court of Appeals vacated the opinion of a district court when the district court affirmed an agency decision upon a petition for judicial review. The appellate court stated that the agency had failed to make findings of fact on certain issues as required under **section 17A.16(1)** and remanded the issue back to the agency, stating:

In remanding this issue to the [agency] for redetermination-which will include a detailed findings of fact and conclusions of law-we point out the defendant's rights to appeal begin anew. Thus, they are entitled to all available agency appeals as well as those within the courts.

Id. at 387.

In **Catalfo v. Firestone Tire & Rubber Co., 213 N.W.2d 506, 509 (Iowa 1973)**, the Iowa Supreme Court discussed the importance of findings of fact in agency decisions. The Court wrote: "Administrative findings of fact must be sufficiently certain to enable a reviewing court to ascertain with reasonable certainty the factual basis on

which the administrative officer or body acted." **Id. (citing Cedar Rapids Steel Transp., Inc. v. Iowa State Commerce Commission, 160 N.W.2d 825, 837 (1968)).**

The Court further clarified that "[m]eaningful appellate review is impossible in the absence of reasoned findings of fact." **Id. (citing Baltimore & Ohio R. Co. v. Aberdeen & Rockfish R. Co., 393 U.S. 87, 92, (1968))** The case cited other cases for the language that "we must know what a decision means before the duty becomes ours to say whether it is right or wrong" and "[w]e only require that, whatever result be reached, enough be put of record to enable us to perform the limited task which is ours." **Id. (quoting United States v. Chicago, M., St. P. & P.R. Co., 294 U.S. 499, 511(1935); Eastern-Central Ass'n v. United States, 321 U.S. 194, 212 (1944)).** The Iowa Supreme Court further issued a remand in **Johnston v. Iowa Real Estate Commission, 344 N.W.2d 236, 239-240 (Iowa 1984).** In this case, the Court found it was inappropriate for the Court to usurp the function of the agency and reverse a decision when it found an agency did not specify its reasoning in a certain decision. The Court stated that "[t]he commission's findings and reasons cannot be supplied by subsequent speculation and conjecture. Only in a rare case will an agency's unexpressed reasoning appear by ineluctable implication from the record." **Id.**

The preceding cases reflect a viewpoint from the appellate courts of this state that the intent of judicial review is not to speak for the agency, but only to review the agency's actions. The PCBR's argument that the path the PAAB took was irrelevant as there was no possible way for the PAAB to reach its ultimate conclusion under Iowa law is noted and understood. But at this point, it is impossible to truly understand what facts the PAAB relied upon or what their legal reasoning for their decision was. In short, the

PCBR's requested remedy of reversal would require this Court to look at the evidence, formulate theories, weigh the proposed evidence, and substitute its own findings for that of the PAAB. This is not the Court's function in judicial review proceedings. The Court's function should be to correct the errors made by an agency, but not to usurp its function entirely. It may be true that the evidence that PAAB relied upon was not competent or interpreted incorrectly, but it cannot be said for certain because the Court has no sense of what their interpretation of the evidence is or even what evidence was relied upon. The best solution for all involved would be to remand this matter back to the PAAB so it can comply with the Iowa Code and deliver a more cogent decision, one that can be easily interpreted by a reviewing Court. Then it will truly be possible to know whether the PCBR's board's complaints are valid without having to engage in speculation and guesswork. The Court repeats that the PCBR retains its ability to properly appeal the action following a decision upon remand in order to ensure fairness from the judicial review process.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the decision of the Appeals Board of September 6, 2007 decision is remanded to the agency for compliance with **Iowa Code section 17A.16**.

SO ORDERED this 20th day of November, 2008.

Jeffrey A. Neary
Judge, Third Judicial District of Iowa